

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

BOBBY MORRIS, individually and on behalf
of all others similarly situated,

Plaintiff

v.

ACME ELECTRIC MOTOR, INC., D/B/A
ACME TOOLS,

Defendant.

No. 4:25-cv-00020
District Judge Matthew T. Schelp

SUPPLEMENTAL DECLARATION OF DEAN SPICER

Pursuant to 28 U.S.C. § 1746, Dean Spicer declares under the penalty of perjury as follows:

1. I submit this supplemental declaration in reply to Plaintiff's Opposition to Acme Electric Motor, Inc.'s Motion to Stay Pending Arbitration Pursuant to FAA Section 3 ("Response").

2. Plaintiff has suggested in his Response that he did not welcome nor invite text messages from Acme. Acme does not text consumers at random in order to send promotional or advertising messages, nor does Acme hire or retain third parties to do so. Acme only sends text messages to consumers' cell phones if they provide electronic consent for Acme to do so.

3. In Plaintiff's case, Acme only began sending Plaintiff's cell phone number text messages because it was manually entered into Acme's gift card giveaway on November 26, 2022, thereby consenting to the receipt of promotional text messages, and Plaintiff's cell phone responded 13 seconds later with a confirmation "Y" text, again opting in to receive promotional text messages from Acme.

4. Based on my review of available business records that are maintained in the ordinary course of Acme's business, after that second opt-in confirmation of consent to receive promotional text messages on November 26, 2022, Acme periodically and continuously texted Plaintiff's cell phone number (636-699-0403) between November 26, 2022 and December 26, 2024, when Acme manually opted Plaintiff out from receiving promotional text messages after Acme received a monetary demand from Plaintiff himself.

5. It is my understanding that Plaintiff has also suggested that Acme's gift card giveaway that he signed up for is an illegal lottery, and for that reason, I have attached as **Exhibit A** the Giveaway Terms that Plaintiff agreed to when submitting his entry on November 26, 2022.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 17th day of April, 2025 in Fargo, North Dakota.


Dean Spicer, Chief Technology Officer

Exhibit A

FAST SHIPPING

FREE SHIPPING OVER \$199

FAMILY OWNED & OPERATED SINCE 1948



OUR COMPANY

CATALOGS

STORE LOCATIONS

CUSTOMER SERVICE

TRACK ORDER

REQUEST QUOTE

Search ...



Welcome,
Sign In | New Account

My Cart
0 item(s)

ALL CATEGORIES ▾

BRANDS ▾

DEALS

WHAT'S NEW

TOOLS ▾

STORAGE & WORKSPACE ▾

LAWN & GARDEN ▾

MATERIAL & HANDLING ▾

SAFETY ▾

EQUIPMENT ▾

AUTOMOTIVE ▾

NO PURCHASE OF ANY KIND IS NECESSARY TO WIN.

SWEEPSTAKES VOID WHERE PROHIBITED BY LAW.

The ACME Tools Text Sign-Up Contest (the "Sweepstakes") is void where prohibited.

ELIGIBILITY

To be eligible for the Sweepstakes, an individual must:

1. Be a legal resident of the continental United States of America, including the District of Columbia, and at least eighteen years old; and
2. Not be employed by Acme Electric Motor, Inc. or ACME TOOLS and its respective affiliate companies, subsidiaries, advertising and promotion agencies, or judges ("Sweepstakes Sponsor" or "Sponsor"), at any time during the Sweepstakes period, including members of their immediate family or persons living in the same household; and
3. Have a valid email address and it is entrant's responsibility to update Sponsor of any change in email address; and
4. Sign up for mobile messaging from Acme Tools. [See terms and conditions](#)

HOW TO ENTER

There are two ways to enter the Sweepstakes:

1. You may enter the Sweepstakes by accessing the entry screen during the Sweepstakes Period on <http://www.acmetools.com/> and fully opt-in to mobile messaging. Any entry which is incomplete will be considered void. Submission of all required information will automatically register one electronic sweepstakes entry.
2. **NO PURCHASE NECESSARY MAIL-IN ENTRY:** There is no purchase necessary to enter the Sweepstakes. To request an entry, send via U.S. mail on a 3" x 5" post card your complete name, address, home telephone number (include area code) and date of birth, to ACME Tools, Attn: "Text Sign-up Contest", Attn: Kayla Greer, PO Box 13720, Grand Forks, ND 58208-3720 to register one Sweepstakes Entry. To be eligible for the Sweepstakes, mail-in entries must be postmarked by the close of business on 00/00/00. No photocopied or mechanically reproduced entries will be accepted. Sweepstakes Sponsor will not be responsible for lost, stolen, misdirected, late, damaged, illegible, incomplete, delayed or postage-due entries. Limit of one "no purchase" entry per person with sufficient postage. Non-winning entries for individual draws will not be pooled for subsequent draws. All Sweepstakes Entries become the property of Sponsor and will not be returned. All eligible electronic Sweepstakes entries and no purchase entries are eligible for the Grand Prize. All Sweepstakes entrants must meet the eligibility requirements set forth in these rules in order to qualify for the Grand Prize.

GRAND PRIZE

There will be one (1) \$599 gift card to Acme Tools (the "Grand Prize"). Total value of the Grand Prize is approximately \$599. The Grand Prize will be delivered to the email address provided on the entry by Sponsor.

WINNER SELECTION

The Sweepstakes Period closes with entries received or postmarked by close of business on the last business day of the Sweepstakes Period. One (1) winner will be selected by the Sweepstakes judges in a random draw from all eligible entries received, at or shortly after 1 pm at the Sponsor's headquarters in Grand Forks, ND on the first Monday of each month.

The winner will be notified by email correspondence. Decisions of judges are final. No correspondence will be entered into except with the winners. The Grand Prize will be awarded from a pool of all Sweepstakes entries received by the Sponsor. The odds of winning will depend upon the actual number of entries received as of the Sweepstakes closing date. The actual number of entries is unknown. However, based on an estimated entry number of 5,000, the odds of winning the Grand Prize are approximately 1 in 5,000.

No prize substitutions will be allowed unless the Sponsor, in its sole discretion, substitutes any prize or component of a prize with a prize or prize component of equivalent kind or value for any reason whatsoever. The Grand Prize is non-transferable, with no cash redemption or equivalent. All federal, state and local laws and regulations apply. The Sponsor shall only be responsible for awarding the Grand Prize as stated in these Official Rules and Regulations.

CLAIMING THE PRIZE

As a condition of winning the Grand Prize, the winner must complete, sign and return the declaration and release forms as administered by the Sponsor within fifteen (15) days of receipt of prize notification or the Grand Prize will be forfeited and an alternate winner's name will be drawn. In the event the winner refuses to complete the Sponsor's release form, the Sponsor may declare the entry void and select a substitute winner. The Grand Prize is non-transferable. All Federal, State and local laws and regulations apply. Winner is responsible for all payment of any taxes due. The winner's name, city/town, photograph, voice or statements may be posted on our website at www.acmetools.com.

Upon acceptance of the Grand Prize by the winner, the Sponsor will be deemed to have awarded the Grand Prize to the winner with the winner assuming full responsibility for the Grand Prize. Should a winner make any false statement(s) in any document referenced above, the winner will be required to promptly return his/her Grand Prize to the Sponsor.

By participating, entrants agree to abide by and be bound by these Official Rules and Regulations and the decisions of the judges, which shall be final and binding with respect to all issues relating to this Sweepstakes. It is your responsibility to ensure that you have complied with all of the conditions contained in the Official Rules and Regulations.

Sponsor will use the email address provided by entrant to contact winner. In the event a winner is selected and fails to respond to Sponsor's email attempts to contact winner for seven days, Sponsor may select another winner. Sponsor will only attempt to contact winner by the email address provided.

Sweepstakes winner consents to the use by the Sponsor of his/her name, photograph and/or likeness and State of residence, voice, and statements made by or attributed to him/her, in perpetuity, in any and all media now known or hereafter developed (including, without limitation, print, broadcast and internet), for all legitimate business purposes including advertising and promotional activities without additional compensation, unless prohibited by law.

LIMITATION OF LIABILITY

The Sponsor is not responsible for any failure of the website during the Sweepstakes Period, including any telephone problems or technical malfunction of any computer on-line systems, servers, access providers, computer equipment, software, failure of any email or entry to be received on account of technical problems or traffic congestion on the internet or at the website, or any combination thereof including any injury or damage to an entrant's or any other person's computer related to or resulting from downloading any material related to the Sweepstakes, all of which may affect a person's ability to participate in the Sweepstakes. Sweepstakes Sponsor reserves the right, in its sole discretion, to cancel or suspend the email portion of this Sweepstakes should a virus, bug or other cause beyond their reasonable control corrupt the security or proper administration of the Sweepstakes. Persons found tampering with or abusing any aspect of this Sweepstakes, or whom the Sponsor believes to be causing malfunction, error, disruption or damage will be disqualified. The Sponsor reserves the right to seek remedies and damages to the fullest extent of the law.

The Sponsor expressly disclaims any responsibility or liability for injury or loss to any person or property relating to the delivery and/or subsequent use of the Grand Prize.

The Sponsor reserves the right to correct any typographical, printing, computer programming or operator errors that may appear.

By participating in this Sweepstakes, entrants agree to release and hold harmless the Sponsor and their respective affiliate companies, subsidiaries, advertising and promotion agencies, or judges, its participating franchisees and each of their respective parent companies, affiliates, subsidiaries, officers, directors, representatives, agents and employees (collectively, the "Released Parties"), from any and all liability from injury, loss or damage of any kind resulting from acceptance, possession, use or misuse of any prize, participation in this Sweepstakes, any breach of these Official Rules and Regulations, or in any prize-related activity. Each entrant agrees to fully indemnify Released Parties from any and all claims by third parties relating to the Sweepstakes, without limitation.

GENERAL CONDITIONS

The Grand Prize is non-transferable with no cash redemption or equivalent. All applicable federal, state and local laws and regulations apply. The Sweepstakes Sponsor shall only be responsible for awarding the prizes as stated in these Official Rules and Regulations. The Sweepstakes Sponsor expressly disclaims any responsibility or liability for injury or loss to any person or property related to the delivery and/or subsequent use of the Prize. All taxes, gratuities, and any other expenses connected with the Grand Prize, which is not specifically mentioned above, are the winner's sole responsibility.

The Sweepstakes Sponsor, in its sole discretion and subject to applicable law, reserves the right to substitute any portion of the Grand Prize with something of equal or greater value if the advertised Grand Prize or portion thereof becomes unavailable. The Sweepstakes Sponsor reserves the right, in its sole discretion, to terminate or suspend the Sweepstakes, or modify the Official Rules and Regulations at any time for any reason whatsoever if fraud or other reasons beyond the control of Sweepstakes Sponsor corrupt the security or administration of the Sweepstakes. The Sweepstakes Sponsor expressly disclaims any responsibility or liability for injury or loss to any person or property relating to the delivery and/or subsequent use of the Grand Prize. The Sweepstakes is void where prohibited by law.

OFFICIAL RULES AND/OR WINNER'S LIST REQUESTS

For a copy of the Official Rules and/or Winner's List, send a self-addressed, stamped envelope to the following address: ACME TOOLS, Attn: Official Rules and/or Winner's List, Attn: Kayla Greer, PO Box 13720, Grand Forks, ND 58208-3720.

PRIVACY/USE OF PERSONAL INFORMATION

The Sponsor respects each participant's privacy and will not sell or trade your information to any outside parties. Sponsor will be collecting personal information in accordance with its privacy policy. The Sponsor wishes to assure you that the Sponsor is dedicated to protecting your privacy. You can contact us or otherwise communicate your privacy concerns by emailing us at support@acmctools.com.

If there is a dispute as to the identity of an online entrant, the Grand Prize will be awarded to the authorized account holder of the email address. The "authorized account holder" is defined as the natural person to whom the email address is assigned by an internet service provider, online service provider or other organization (e.g., business, educational institution, etc.) that is responsible for assigning email addresses for the domain associated with the submitted email address.

By entering the Sweepstakes each participant agrees to the entering of their name and personal information and use in the Sponsor's mailing list including E-mail.

The complete ACME TOOLS Privacy Policy is available at www.acmetools.com.

CHOICE OF LAWS

This Sweepstakes and any interpretation of these rules and release shall be governed by the law of the State of North Dakota. All participants in the Sweepstakes agree to submit to the jurisdiction of the State of North Dakota and the Federal Court in Grand Forks as necessary..

TERMINATION

If, for any reason, the Sweepstakes is not capable of running as planned, including infection by computer viruses, bugs, tampering, unauthorized intervention, fraud, technical failures, or any other causes beyond the control of the Sponsor, the Sponsor reserves the right, at its sole discretion, and as permitted by law to cancel, terminate, modify or suspend the Sweepstakes and select the winner(s) from among all eligible entries prior to the cancellation.

DISPUTES/CLAIMS OF LAW

Except where prohibited, each entrant agrees that: (1) any and all disputes, claims and causes of action arising out of or connected with this Sweepstakes or any Grand Prize awarded shall be resolved individually without resort to any form of class action, and exclusively by state or federal courts situated in North Dakota (2) any and all claims, judgments and awards shall be limited to actual out-of-pocket costs incurred, but in no event attorneys' fees; and (3) no punitive, incidental, special, consequential or other damages, including without limitation lost profits may be awarded (collectively, "Special Damages"), and (4) entrant hereby waives all rights to claim Special Damages and all rights to have such damages multiplied or increased.

SWEEPSTAKES SPONSOR

The Sweepstakes sponsor is ACME TOOLS with corporate offices located at 1101 N. Washington, North, Grand Forks, ND 58203.